

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ANDREW S. CWIK,	:	APPEAL NO. C-100423
	:	TRIAL NO. SK0900674
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
DAVID E. CORRY,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court.¹ On July 10, 2010, this court sua sponte consolidated this cause with appeal number C-100291 for purposes of briefing and argument. For clarity of decision, we now decide these two appeals separately.

Raising two assignments of error, plaintiff-appellant Andrew S. Cwik appeals the trial court's entry overruling his objections to and adopting a magistrate's decision denying his petition, made under R.C. 2903.214, for a five-year civil stalking protection order ("CSPO") against defendant-appellee David E. Corry, the boyfriend of Cwik's ex-wife, Patricia Soman.

In his petition, Cwik alleged that Corry had verbally accosted and threatened him on numerous occasions, had jogged past Cwik's residence, and had hidden in trees located across the street from Cwik's residence. Following a full hearing on the petition, including

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

testimony from Cwik, his mother, and his father, the magistrate denied the petition. Cwik filed objections to the magistrate's decision.

Without receiving additional evidence, the trial court overruled the objections and adopted the magistrate's decision.² Cwik now argues that the magistrate erroneously assumed that an explicit threat of violence by Corry and a showing of Cwik's actual mental distress were required elements of Cwik's case.

{¶1} For the trial court to grant a CSPO, the petitioner must show, by a preponderance of the evidence, that the complained of conduct violates the menacing-by-stalking statute, R.C. 2903.211.³ To determine whether Cwik was entitled to a CSPO in this case, the weight to be given the evidence and the credibility of the witnesses was primarily for the triers of fact—the magistrate and the trial court—to determine.⁴ We review a trial court's entry overruling objections to a magistrate's decision and adopting the magistrate's denial of a CSPO petition under an abuse-of-discretion standard.⁵ Reversal is warranted only when the court's decision was unreasonable, arbitrary, or unconscionable. An unreasonable decision is one that no sound reasoning process supports.⁶

After reviewing the transcript of the hearing and the supporting exhibits, we find Cwik's argument to be meritless. The magistrate correctly identified the legal and factual predicates for issuing a CSPO.⁷ The magistrate's determinations that the incidents between Cwik and Corry involved neither credible threats of physical harm by Corry nor

² See Civ.R. 53(D)(4)(d) and 53(D)(4)(i).

³ See *Lindsay v. Jackson* (Sept. 8, 2000), 1st Dist. No. C-990786, citing *Felton v. Felton*, 79 Ohio St.3d 34, 1997-Ohio-302, 679 N.E.2d 672.

⁴ See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

⁵ See *Davis v. Haller* (May 26, 2010), 1st Dist. No. C-090551; *Baranack v. Rose*, 5th Dist. Nos. 2010-AP-010004 and 2010-AP-020006, 2010-Ohio-2754, ¶7; but, see, *Abuhamda-Sliman v. Sliman*, 161 Ohio App.3d 541, 2005-Ohio-2836, 831 N.E.2d 453, ¶9-10 (noting the lack of uniformity among the appellate districts with regard to the proper standard of review in appeals from CSPOs).

⁶ See *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.

⁷ See *Lindsay v. Jackson*.

the pattern of mental-distress-inducing behavior contemplated under R.C. 2903.211 was amply supported by the record. And the trial court did not abuse its discretion in overruling the objections and adopting the magistrate's decision to deny Cwik the protection of a CSPO. As a result, we overrule Cwik's assignments of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 30, 2011
per order of the Court _____.
Presiding Judge